

ENTERED

December 02, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

MARIO YARRITO,

Petitioner,

VS.

BOBBY LUMPKIN,

Respondent.

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CIVIL ACTION NO. 7:21-CV-171

ORDER ADOPTING REPORT AND RECOMMENDATION

Pending before the Court is Petitioner Mario Yarrito's Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254, which had been referred to the Magistrate Court for a report and recommendation. On October 19, 2021, the Magistrate Court issued the Report and Recommendation, recommending that Respondent's motion for summary judgment be granted, that Petitioner's § 2254 habeas petition be denied, that Petitioner be denied a certificate of appealability, and that this action be dismissed. Petitioner Mario Yarrito has filed timely objections to the Magistrate Court's Report and Recommendation. In such objections, Petitioner contends the Magistrate Court misunderstood his claim. Petitioner contends he is not challenging that the denial of parole violated his due process rights, but rather that the failure to provide the requisite interview denied him a meaningful opportunity to be heard and that this constituted a due process violation. Regardless of whether the Magistrate Court specially understood this distinction, Petitioner's claim fails.

The Fifth Circuit has held that "[t]he protections of the Due Process Clause are only invoked when State procedures which may produce erroneous or unreliable results imperil a protected liberty or property interest. It is therefore axiomatic that because Texas prisoners have

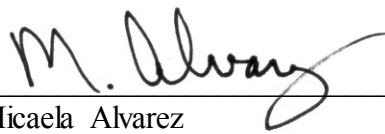
no protected liberty interest in parole they cannot mount a challenge against any state parole review procedure on procedural (or substantive) Due Process grounds.”¹ Thus, the Magistrate Court correctly held that Petitioner has no protected liberty interest in parole and therefore no right to relief.

Pursuant to 28 U.S.C. § 636(b)(1)(c), the Court has made a de novo determination of those portions of the report to which objections have been made. As to those portions to which no objections have been made, in accordance with Federal Rule of Civil Procedure 72(b), the Court has reviewed the report for clear error.

Having thus reviewed the record in this case, the parties’ filing and the applicable law, the Court adopts the Report and Recommendation in its entirety. Accordingly, it is hereby ORDERED that Respondent’s Motion for Summary Judgment is GRANTED, that Petitioner’s Petition for Writ of Habeas Corpus Pursuant to § 2254 is DENIED, that Petitioner is denied a certificate of appealability, and that this action is DISMISSED.

IT IS SO ORDERED.

DONE at McAllen, Texas, this 2nd day of December, 2021.



Micaela Alvarez
United States District Judge

¹ *Johnson v. Rodriguez*, 110 F.3d 299, 308 (5th Cir. 1997) (Internal citations omitted).